U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

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[redacted]

DATE: FEB 2 1 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a registered nurse. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner did not establish that she qualifies for classification as a member of the professions holding an advanced degree, or that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The first issue is whether the petitioner qualifies for classification as a member of the professions holding an advanced degree. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(2) includes the following relevant definitions:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The USCIS regulation at 8 C.F.R. § 204.5(k)(3)(i) states that, to show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

> (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The petitioner filed the Form I-140 petition on August 13, 2009. On that form, the petitioner listed her occupation and job title as "registered nurse." In an accompanying statement, the petitioner described herself as a "Nursing and Infectious Disease Professional In the National Interest."

The petitioner did not claim to hold an advanced degree. Instead, the petitioner claimed the equivalent of such a degree, by virtue of two Bachelor of Science degrees: one in medical technology (2002) and one in nursing (2005). Because the petitioner earned her B.S. in nursing less than five years before the petition's filing date, it is not possible for her to have accumulated five years of progressive post-baccalaureate experience in the specialty of nursing before the 2009 filing date.

In a request for evidence (RFE) dated October 16, 2009, the director stated:

> The U.S. Department of Labor Occupational Outlook Handbook, 2008-09 Edition states that "the three major educational paths to registered nursing are a bachelor's degree, an associate's degree, and a diploma from an approved nursing program." As a result, the qualification of less than a bachelor's degree, categorizes the position of Registered Nurse under Section 203(b)(3)(A)(i) of the INA "Skilled Worker" and does not normally qualify under Section 203(b)(2) of the INA "Member of Professional [*sic*] with Advanced Degree or Exceptional Ability." . . .
>
> Please provide evidence that the position offered requires an advanced degree or exceptional ability.

The director stated that the petitioner's "response must be received by this office by November 27, 2009," and that the petitioner "must submit all of the evidence at one time. Submission of only part of the evidence requested will be considered a request for a decision based upon the record. No extension of the period allowed to submit evidence will be granted." These listed conditions come directly from the USCIS regulations at 8 C.F.R. §§ 103.2(b)(8)(iv) and (11).

The petitioner's response included a copy of the envelope that had contained the RFE. The date on the postmark, October 22, 2009, was six days after the date on the RFE itself. Counsel correctly observed that the petitioner was, therefore, entitled to an additional six days to respond past the stated November 27, 2009 deadline. The director did not properly serve the RFE until the mailing date. *See* 8 C.F.R. § 103.5a(b). The director correctly accepted the petitioner's response, received November 30, 2009, as timely.

The petitioner's response to the RFE included evidence that she holds two bachelor's degrees. This evidence does not address the director's concerns. If the petitioner's occupation does not qualify as a profession, then the petitioner's academic degrees are irrelevant. The petitioner's possession of those degrees does not imply that any of those degrees is the minimum requirement for entry into the occupation. The petitioner did not acknowledge or respond to the Department of Labor information cited by the director, indicating that many registered nurses do not hold at least a baccalaureate degree. This information, on its face, indicates that registered nursing does not meet the regulatory definition of a profession. The petitioner effectively conceded the point by offering no rebuttal whatsoever.

In terms of whether or not the petitioner holds the equivalent of an advanced degree, counsel contended that the petitioner's education and experience, in the aggregate, amount to the functional equivalent of an advanced degree. Counsel repeats this claim on appeal, and the AAO will address it in that context.

The record contains an "Amendment to Response to Request for Evidence," dated January 22, 2010. Counsel claimed that this amendment "is . . . timely filed for review pursuant [to] federal regulations," but did not cite to any regulations. The USCIS regulation at 8 C.F.R. § 103.2(b)(11) reads, in part: "All requested materials must be submitted together at one time. . . . Submission of only some of the requested evidence will be considered a request for a decision on the record." The regulation at 8 C.F.R. § 103.2(b)(8)(iv) gives the director the discretion to determine the response time and specifies that "[a]dditional time to respond to a request for evidence . . . may not be granted." Thus, "federal regulations" do not permit the petitioner to "amend" a previously submitted response to an RFE. The amendment arrived more than a month after the response deadline specified in the RFE (even after taking into account the necessary six-day adjustment for the delay in mailing). Therefore, the petitioner did not submit the amendment in compliance with "federal regulations." Rather, those regulations clearly rule out consideration of the amendment.

The director denied the petition on January 22, 2010, based partly on the finding that the petitioner does not qualify as a member of the professions holding an advanced degree or its defined equivalent. The director also noted that the petitioner had not claimed eligibility as an alien of exceptional ability in the sciences, the arts or business, and therefore there was no need for a full discussion of that issue.

On appeal, counsel states:

> It is not disputed that this RN does not have 10 years or even 5 years working solely in her profession as a qualified professional nurse. At the same time, she has 10 years of progressive working experience and real life experience to bring with her to the table. Given the blood in the alley, the fact that millions of American lives are now at stake, we think that the Director can read more into their interpretation of the applicable regulations. Five years of working experience should be added to the applicant's two Bachelor's degrees, coupled with experience in post-secondary education as a professor and working experience, to be found equivalent to an Eb2 advanced degree. Such a finding serves our national interest, and permits this applicant to proceed ahead with her claim to eligibility.

Counsel does not explain how multiple baccalaureate degrees and the petitioner's experience as an instructor in microbiology (for less than two months) overcome the requirement for a degree above a baccalaureate or a baccalaureate plus five years of post-baccalaureate experience. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) calls for five years of progressive post-baccalaureate experience in the specialty, in this instance nursing. Experience in some other occupation is, by definition, not experience "in the specialty." Counsel cites no legal authority that allows USCIS to waive the requirement that the beneficiary hold an advanced degree or the equivalent as defined at 8 C.F.R. § 204.5(k)(2) for classification as a member of the professions holding an advanced degree. USCIS lacks the discretion to redefine what amounts to an advanced degree; rather, USCIS is bound by the regulatory definition at 8 C.F.R. § 204.5(k)(2). USCIS may not utilize novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Love Korean Church v. Chertoff,* 549 F.3d 749, 758 (9th Cir. 2008). The national interest waiver that the petitioner seeks waives the alien employment certification process, not the requirements for classification under section 203(b)(2) of the Act. The waiver, by statute, is available only to members of the professions holding advanced degrees and aliens of exceptional ability in the sciences, the arts and business.

Beyond the above points, the AAO notes that the petitioner never adequately addressed the director's earlier concerns about whether nursing is a qualifying profession. The AAO will affirm the director's finding that the petitioner has not shown that she qualifies as a member of the professions holding an advanced degree.

The second and final issue concerns the petitioner's eligibility for a national interest waiver of the job offer requirement. The petitioner cannot qualify for the waiver without first showing that she qualifies for the underlying immigrant classification. Nevertheless, in the interest of clarity and thoroughness, the AAO will consider the petitioner's waiver claim here.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

In a statement that accompanied the initial filing, the petitioner stated:

> Infectious disease remains a threat to health care world-wide, including to Americans. . . . The present pandemic caused by the H1N1 virus, commonly known as 'Swine Flu' has proven this point. . . . It affected millions of individuals and cost the lives of hundreds of people. It is my calling and objective to offer my services in this great nation to the American people. To achieve my objectives, I need to work with clinicians, surgeons, and patients in medical centers, research centers, laboratories and clinical forums. I can then provide to these interested parties my expertise with state-of-the-art infectious disease diagnostic techniques based upon my combined background in both medical technology (microbiology/virology/parasitology/

mycology) and professional nursing, and provide insights that I have learned and experienced in my career.

The petitioner then discussed her own credentials and offered general assertions about the importance of fighting infectious disease. The petitioner stated: "Labor certification process, even with Schedule A, is not a viable option at this time, and would require a delay of 26 months or longer." The petitioner submitted extensive documentation of her training and certification, as well as materials regarding a shortage of nurses in the United States.

In the October 2009 RFE, the director acknowledged "the proposed employment has substantial intrinsic merit," and instructed the petitioner to establish the national scope of her occupation. The director also asked for evidence that the petitioner "served the national interest to a substantially greater extent than the majority of [her] peers." The director noted that the petitioner had submitted considerable background information about her occupation, but "the record lacks evidence of the impact [the petitioner], personally, [has] had on the field of nursing."

In response to the RFE, counsel discussed the nursing shortage and stated that the present petition is "much more like that of physicians who are willing to serve in health care shortage areas." Counsel referred, here, to section 203(b)(2)(B)(ii) of the Act, which created blanket waivers for certain physicians practicing in medically underserved areas. The USCIS regulations at 8 C.F.R. § 245.12 implemented this provision of the Act.

Congress is presumed to be aware of existing administrative and judicial interpretation of statute when it reenacts a statute. *See Lorillard v. Pons*, 434 U.S. 575, 580 (1978). In this instance, Congress's awareness of *NYSDOT* is a matter not of presumption, but of demonstrable fact. Congress enacted section 203(b)(2)(B)(ii) of the Act in direct response to the 1998 *NYSDOT* precedent decision. Congress, at that time, could have taken any number of actions to limit, modify, or completely reverse the precedent decision, including applying the waiver to nurses and exempting them from meeting the professional and degree requirements of section 203(b)(2) of the Act. Instead, Congress let the decision stand, apart from a limited exception for certain physicians working in shortage areas, as described in section 203(b)(2)(B)(ii) of the Act. Counsel cited several recent laws relating to nurses, none of which amend the national interest waiver provisions set forth at section 203(b)(2) of the Act. Because Congress has made no further statutory changes in the decade since *NYSDOT*, the AAO can presume that Congress has no further objection to the precedent decision. In short, counsel's attempt to link nursing to the physician waiver by analogy fails, because Congress could have extended the waiver to nurses, but did not do so.

Counsel cited the Nursing Relief for Disadvantaged Areas Act of 1999, P.L. 105-95, 113 Stat. 1312 (Nov. 12, 1999) as an example of a Congressional mandate that the admission of nurses is in the national interest. The Act of 1999 only created a nonimmigrant classification for nurses. Notably, this is the same legislation that made the national interest waiver available to physicians serving in underserved areas. The statute did not, however, mention nurses in the context of the national interest waiver despite expressly amending that provision for physicians (and having the word "Nursing" in the name of the legislation).

Counsel cited *Francis v. Reno,* 269 F. 2d 162-170-71 (3rd Cir. 2001), for the proposition that USCIS must interpret the relevant statutes in favor of the beneficiary. The statute at issue is section 203(b)(2) of the Act. This statute simply cannot be interpreted in any logical way as supporting an approval of the petition, most significantly because the beneficiary does not qualify as a member of the professions, admittedly does not possess an advanced degree or the equivalent as defined at 8 C.F.R. § 204.5(k)(2) and is not an alien of exceptional ability. As stated above, Congress permits USCIS to waive the alien employment certification process in the national interest, not the other requirements for eligibility for the classification. Section 203(b)(2)(B)(i) of the Act.

In the January 22, 2010 denial notice, the director noted the petitioner's heavy emphasis on "the current shortage of nurses." The director also noted: "Congress has already provided in section 203(b)(2), (3)(A)(i) and (ii) of the Act to make provisions for Scheduled [*sic*] A Group I blanket labor certifications for permanent positions in the registered nurse or physical therapy occupations." The director cited *NYSDOT*'s finding that "the job offer waiver based on national interest is not warranted solely for the purpose of ameliorating a local labor shortage, because the labor certification process is already in place to address such shortages." *Id.* at 218.

On appeal, counsel notes that an employer has filed a new petition on the petitioner's behalf, classifying her as a skilled worker under section 203(b)(3) of the Act, with Schedule A, Group I certification. [redacted] filed Form I-140, with receipt number [redacted] on [redacted] The director approved the petition on January 14, 2010. The one-month turnaround refutes the petitioner's claim that a petition under "Schedule A, is not a viable option at this time, and would require a delay of 26 months or longer." The AAO notes that the approval of this petition was the focus of the petitioner's attempt to amend the RFE response. By the time the petitioner mailed that amendment, the director had already denied the petition.

The new petition is, administratively, a separate matter from the present proceeding. Approval of a petition with Schedule A, Group I certification does not in any way imply eligibility for the national interest waiver. Petitions under Schedule A require a job offer, whereas the national interest waiver waives the job offer, making the two petition types mutually exclusive; it is impossible to have a national interest waiver and Schedule A certification within the same proceeding. The approval of the new petition shows only that USCIS is capable of expeditiously approving a petition for a Schedule A nurse.

Claiming that the petitioner's work is national in scope, counsel states:

> National scope of benefit in this matter: We are now facing a major issue in medical ethics in the United States: Who will receive health and nursing care while facing death from H1N1? Due to the crisis and shortage, will only the wealthy receive adequate nursing care? Will the government be forced to ration nursing care for only the most compelling needs, like what has taken place in the organ transplant area. The growing shortage will mean that every able bodied nurse must be supported, permitted to work and protected to save us from this ongoing crises. In our great

> nation, we seek to treat all patients and individuals equally, with dignity, and the best medical and rehabilitative care available. This too is now in the national interest.

Counsel states: "We dispute the conclusions of the Director that one individual who works in public health cannot have a national impact." The director did not make such a conclusion. One could be an "individual who works in public health" in a capacity other than that of a registered nurse. Counsel asserts that "millions of American lives are now at stake" from the H1N1 pandemic and other infectious diseases, but does not explain how the actions of one nurse would significantly affect the toll from the disease.

As the director noted in the decision, *NYSDOT* provides the following examples of occupations that do not provide benefits that are national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 22 I&N Dec. at 217 n.3. Consistent with this analysis, the impact of a single nurse at one hospital or other health care facility would be so attenuated at the national level as to be negligible. The same reasoning also applies to medical technologists, so counsel's observation that the petitioner also holds that qualification is without effect. The AAO will affirm the director's finding that the petitioner's occupation lacks national scope.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. This final question is "specific to the alien." *Id.* at 217, 222-23. In an introductory statement, counsel asserts that the petitioner's "unique qualifications, background, training and importance meet the standards set by the New York Department of Transportation precedent decision." The accompanying appellate brief, however, does not elaborate upon this point. By failing to support this claim on appeal, counsel has effectively abandoned it. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (per curiam); *Irwin v. Hawk*, 40 F.3d 347, 347 n. 1 (11th Cir. 1994) (per curiam); *Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979) (per curiam) (deeming abandoned an issue raised in the statement of issues but not anywhere else in the brief).

Despite the clear and unambiguous language that the ultimate question is the beneficiary's individual merits, the body of counsel's brief rests on the assertion that the sheer importance of alleviating the nursing shortage justifies a waiver of the alien employment certification process in the national interest, even when (as here) the petitioner is already the beneficiary of an approved petition under other provisions enacted specifically for nurses.

NYSDOT, 22 I&N Dec. at 215 et seq. states and then reiterates several times that a shortage is not a basis for the national interest waiver of the process designed to test the labor market. First, the decision states:

> With regard to the unavailability of qualified U.S. workers, the job offer waiver based on the national interest is not warranted solely for the purpose of ameliorating a local labor shortage, because the labor certification process is already in place to address such shortages.

Id. at 218.

In response to a claim of a national shortage, the decision explains that this assertion "should be tested through the labor certification process." *Id.* at 220. The decision further states that the issue of a shortage is not even within USCIS' jurisdiction. Specifically, the decision states: "The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor." *Id.* at 221. The decision continues:

> A number of the witnesses in this case assert that engineers with the beneficiary's qualifications are in short supply, yet are desperately needed because of the deterioration of U.S. bridges. The petitioner has never clearly explained why the job offer and thus the labor certification requirement should be waived. Given the asserted shortage of qualified engineers with the requisite training, and the evidence existence of an offer of permanent employment, the situation appears to correspond closely to the very situation that the labor certification process was designed to address.

Id. at 222.

Counsel is essentially proposing a blanket waiver for all nurses in the second preference category (despite the fact that nurses do not qualify as members of a profession) due to the severity of the shortage at the national level and the importance of the occupation. *NYSDOT,* 22 I&N Dec. at 217, 220, 223, states:

> A petitioner cannot establish qualification for a national interest waiver based solely on the importance of the alien's occupation. It is the position of the Service to grant national interest waivers on a case by case basis, rather than to establish blanket waivers for entire fields of specialization.

Id. at 217. The decision continues:

> The employer's assertions regarding the overall importance of an alien's area of expertise cannot suffice, however, to establish eligibility for a national interest waiver. The issue in this case is not whether proper bridge maintenance is in the national interest, but rather whether this particular beneficiary, to a greater extent than

> U.S. workers having the same minimum qualifications, plays a significant role in the preservation and construction of bridges.

Id. at 220. The decision concludes:

> Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien as they relate to the job to be performed.

Counsel notes repeatedly that the beneficiary is a qualified nurse. Objective qualifications that are necessary for the performance of the occupation can be articulated in an application for alien employment certification; the fact that the alien is qualified for the job does not warrant a waiver of the alien employment certification requirement. *Id.* at 220-21.

A waiver of the alien employment certification process would serve no purpose in this matter. Counsel acknowledges that DOL has already designated nurses as an occupation in which "there are not sufficient United States workers who are able, willing, qualified, and available," defined as Schedule A Group I. 20 C.F.R. § 656.5(a)(2). An employer seeking an alien employment certification for a Schedule A occupation may already apply for alien employment certification directly with USCIS rather than DOL pursuant to 20 C.F.R. § 656.15. Moreover, as noted by counsel, the USCIS Ombudsman has already recommended that USCIS prioritize Schedule A adjustment applications for nurses.

Despite the existence of the expedited blanket waiver under Schedule A, Group I, counsel asserts that this existing process is insufficient to alleviate the national shortage of nurses because the visa numbers are oversubscribed. The problem, however, is not that the Schedule A designation process itself causes any delay or otherwise takes longer to adjudicate than a request for a waiver of that process, both filed with USCIS. USCIS approved [redacted] petition in a month. Rather, the delay to which counsel must refer is the oversubscription of third preference visas, especially in the country in which the beneficiary was born. The national interest waiver, however, only waives the alien employment certification process. Section 203(b)(2)(B)(i) of the Act. It does not and cannot override backlogs in immigrant visa numbers, and it does not expedite the processing time for an adjustment application (or increase such an application's chances of approval). In this case the alien employment certification process for which the petitioner seeks a waiver is the already expedited Schedule A, Group I process. Counsel has not demonstrated how waiving that process is in the national interest. Specifically, waiving the process can only benefit the beneficiary if USCIS also waives the other requirements set forth in section 203(b)(2), that the beneficiary be a member of a profession, possess an advanced degree or qualify as an alien of exception ability. USCIS does not have the authority to redefine the classifications that Congress mandated, even if alleged to be in the national interest. The oversubscription of third preference visas and its impact on the nursing shortage, assuming an impact exists, is a problem that only Congress can address beyond what the USCIS Ombudsman has recommended.

Ultimately, eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, USCIS generally does not accept the contention that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. The petitioner has not documented that she has a past history of achievement with some degree of influence on the field as a whole.

For the above reasons, the AAO affirms the director's finding that the petitioner has not established eligibility for the national interest waiver. The AAO has already explained why the petitioner has, likewise, failed to establish eligibility for the underlying classification as a member of the professions holding an advanced degree or its defined equivalent.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.